

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

LEA MÁRQUEZ PETERSON - Chairwoman
SANDRA D. KENNEDY
JUSTIN OLSON
ANNA TOVAR
JIM O'CONNOR

In the matter of:

DAVID L. SHOREY and MARY JANE
SHOREY, husband and wife,

ABCO ENERGY, INC., a Nevada for-profit
corporation, formerly known as ENERGY
CONSERVATION TECHNOLOGIES, INC.,
a Nevada for-profit corporation,

ABCO SOLAR, INC., an Arizona for-profit
corporation, formerly known as WESTCAP
ENERGY, INC., an Arizona for-profit
corporation,

Respondents.

DOCKET NO. S-21152A-21-0117

**NOTICE OF OPPORTUNITY FOR
HEARING REGARDING PROPOSED
ORDER TO CEASE AND DESIST, ORDER
FOR RESTITUTION, ORDER FOR
ADMINISTRATIVE PENALTIES, AND
ORDER FOR OTHER AFFIRMATIVE
ACTION**

NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents David L. Shorey, ABCO Energy, Inc., formerly known as Energy Conservation Technologies, Inc. and ABCO Solar, Inc., formerly known as Westcap Energy, Inc. have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

The Division alleges that David L. Shorey was a person controlling ABCO Energy, Inc., formerly known as Energy Conservation Technologies, Inc., within the meaning of A.R.S. § 44-1999(B), so that David L. Shorey is jointly and severally liable under A.R.S. § 44-1999(B) to the same extent as ABCO Energy, Inc., formerly known as Energy Conservation Technologies, Inc., for its violations of the antifraud provisions of the Securities Act.

1 The Division further alleges that David L. Shorey was a person controlling ABCO Solar, Inc.
2 formerly known as Westcap Energy, Inc., within the meaning of A.R.S. § 44-1999(B), so that David L.
3 Shorey is jointly and severally liable under A.R.S. § 44-1999(B) to the same extent as ABCO Solar,
4 Inc., formerly known as Westcap Energy, Inc., for its violations of the antifraud provisions of the
5 Securities Act.

6 **I.**

7 **JURISDICTION**

8 1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona
9 Constitution, and the Securities Act.

10 **II.**

11 **RESPONDENTS**

12 2. At all times relevant, David L. Shorey (“Shorey”) has been married to Mary J. Shorey,
13 and both are residents of Arizona. Shorey has not been registered with the Commission as a securities
14 salesman or dealer.

15 3. ABCO Energy Inc. (“ABCO Energy”) is a Nevada for-profit corporation formerly
16 known as Energy Conservation Technologies, Inc. (“ENYC”), which was incorporated by other
17 individuals on July 29, 2004. In July of 2011, ENYC entered into a material definitive agreement with
18 Westcap Energy, Inc. (“WCE”), a Nevada corporation, doing business as Westcap Solar and/or ABCO
19 Solar, to exchange the common stock of ENYC for 100 percent of the common stock of WCE. At all
20 times relevant, WCE was based in Tucson, Arizona, and WCE’s president and director was Charles
21 O’Dowd (“O’Dowd”), and its chairman and CEO was Shorey.

22 4. The stock exchange between ENYC and WCE resulted in a reverse merger. Prior to the
23 reverse merger, ENYC had “filed a Regulation D offering with the SEC (U.S. Securities and Exchange
24 Commission) ... and sold a number of restricted shares to fund the company [*sic*] operations.” ENYC
25 also “registered with the OTC Pink Sheets (Over-The-Counter markets) to become [*sic*] publicly traded
26

1 entity.” The principle reason for the reverse merger was so WCE could “become a publicly traded
2 entity” with access to the capital markets, and WCE would manage the sales and operations of ENYC.

3 5. ENYC was the survivor of the reverse merger; however, control of ENYC was “now in
4 the hands of the management and majority shareholders” of WCE. On September 23, 2011, Shorey
5 acted in his capacity as an officer of ENYC filed ENYC’s annual list of officers, directors, and registered
6 agent and state business license application with the Nevada Secretary of State. In the filing, Shorey was
7 listed as ENYC’s president, secretary, and treasurer. And, O’Dowd was listed as ENYC’s director.

8 6. On October 31, 2011, Shorey acted in his capacity as an officer of ENYC and filed a
9 Certificate of Amendment to Articles of Incorporation with the Nevada Secretary of State, which
10 changed ENYC’s name to “ABCO Energy, Inc.” From at least 2011, through the present, ABCO Energy
11 has been based in Tucson, Arizona, and all of ABCO Energy’s officers and employees were “officed”
12 at ABCO Energy’s principal business address located in Tucson, Arizona.

13 7. From at least 2011, through October of 2019, O’Dowd was and/or had acted in the
14 capacity of ABCO Energy’s president and director. From at least 2011, through the present, Shorey
15 has been and/or has acted in the capacity of ABCO Energy’s chief executive officer (“CEO”) and
16 chief financial officer (“CFO”). And, Shorey was indirectly the largest shareholder in ABCO Energy
17 through his ownership of SSI Development, Inc., a Wyoming corporation. At all times relevant,
18 ABCO Energy held business accounts in Arizona at the Bank of America, N.A., and Western Alliance
19 Bank, N.A. Shorey was signer on all ABCO Energy’s business accounts.

20 8. ABCO Energy has not been registered with the Commission as a securities salesman or
21 dealer.

22 9. ABCO Solar Inc. (“ABCO Solar”) is an Arizona for-profit corporation formerly known
23 as Westcap Energy, Inc. (“WEI”), which was incorporated in the state of Arizona by Shorey on August
24 5, 2008. From at least 2008, through 2011, Shorey was WEI’s chief executive officer, director, and
25 secretary. From at least 2010, through 2011, O’Dowd was WEI’s president and director. On May 4,
26 2011, Shorey as CEO of WEI filed an Article of Amendment with the Commission, which changed

1 WEI's name to Westcap Solar, Inc. On July 7, 2011, O'Dowd as president of Westcap Solar, Inc., filed
2 an Article of Amendment with the Commission, which changed Westcap Solar Inc.'s name to ABCO
3 Solar, Inc.

4 10. From at least 2011, through the present, ABCO Solar has been based in Tucson, Arizona.
5 At all times relevant, Shorey has been and/or has acted in the capacity of ABCO Solar's CEO, CFO,
6 president, and secretary. From at least 2011, through October of 2019, O'Dowd was and/or had acted
7 in the capacity of ABCO Solar's CEO, president, director, and secretary. At all times relevant, O'Dowd
8 was a married man and resident of Arizona. O'Dowd has not been registered with Commission as a
9 securities salesman or dealer.

10 11. At all times relevant, ABCO Solar held business accounts in Arizona at the Bank of
11 America, N.A., Wells Fargo Bank, N.A., and BBVA Compass Bank, N.A. Shorey and O'Dowd were
12 both signers on all ABCO Solar's business accounts.

13 12. From at least 2011, through the present, ABCO Solar has shared the same office space
14 [located in Tucson, Arizona] with ABCO Energy. ABCO Solar is a wholly owned subsidiary of ABCO
15 Energy. From 2011, through the present, ABCO Energy has conducted business as ABCO Energy
16 and/or as ABCO Solar.

17 13. ABCO Solar has not been registered with the Commission as a securities salesman or
18 dealer.

19 14. At all times relevant, Mary J. Shorey ("M.J. Shorey") has been the spouse of Respondent
20 Shorey. M.J. Shorey may be referred to as "Respondent Spouse." Respondent Spouse is joined in this
21 action under A.R.S. §44-2031(C).

22 15. At all times relevant, Shorey, was acting for his own benefit and on behalf of and for the
23 benefit Shorey's and M.J. Shorey's marital community.

24 16. Shorey, ABCO Energy formerly known as ENYC (hereinafter, "ABCO Energy"), and
25 ABCO Solar formerly known as WEI (hereinafter, "ABCO Solar") may be referred to collectively as
26 "Respondents."

III.
FACTS

A. Introduction

17. In 2011, ABCO Energy, a Nevada corporation, based in Tucson, Arizona, which sold and installed photovoltaic and solar thermal products, entered into an agreement with Intuition Capital Corporation (“Intuition Capital”), a company based in the United Kingdom and/or Spain. Intuition Capital agreed to solicit foreign investors for ABCO Energy’s securities offerings, which consisted of “4,000,000 restricted common shares priced at \$.40 USD.”

18. In exchange, ABCO Energy agreed to pay Intuition Capital an estimated 65 percent of the “funds successfully raised through Intuition [*sic*] referrals.” Thus, approximately 65 percent of all ABCO Energy’s securities investments were contractually committed to the payments of commissions, leaving only approximately 35 percent available to ABCO Energy to obtain a return for the investors.

19. During the relevant time-period, from 2011 through 2019, Respondents offered and sold ABCO Energy’s securities offerings in the form of common stock and/or convertible preferred stock within or from Arizona to eighty-one foreign investors. The investors collectively invested \$7,699,546.19 in ABCO Energy’s securities offerings. Respondents via ABCO Energy’s securities offerings and/or offering documents made numerous misrepresentations and omissions of material facts.

B. Previous Commission’s actions

20. In 2013, the Commission issued Decision No. 73656 against Shorey and his company Cell Wireless Corporation and issued Decision No. 73775 against Shorey and his other company Westcap Energy, Inc., [later known as ABCO Solar].

Decision No. 73656

21. On October 21, 2010, the Division filed a Notice of Opportunity for Hearing (the “Notice”) against Shorey, Cell Wireless Corporation (“CWC”), and others. CWC was a Nevada

1 corporation, which had its principal place of business in Tucson, Arizona. Shorey was the president,
2 director, chief financial officer, and secretary of CWC.

3 22. On February 6, 2013, the Commission issued Decision No. 73656, which ordered
4 Shorey, CWC, and others to cease and desist from their actions in violation of A.R.S. §§ 44-1841,
5 44-1842, and 44-1991. The Decision further ordered Shorey, the marital community of Shorey and
6 M.J. Shorey, jointly and severally with CWC and others to pay restitution in the principal amount of
7 \$130,000, and to pay a \$9,000 administrative penalty. As yet, the restitution in the amount of
8 \$130,000 has not been paid.

9 23. The Commission found that CWC and others “committed fraud in the sale of
10 securities, engaging in transactions, practices or a course business which involved untrue statements
11 and omissions of material facts in violation of A.R.S. § 44-1991.” Shorey was found to have directly
12 or indirectly controlled CWC within the meaning of A.R.S. § 44-1999(B), and Shorey was jointly
13 and severally liable under A.R.S. § 44-1999(B) to the same extent as CWC was for its violations of
14 A.R.S. § 44-1991.

15 Decision No. 73775

16 24. On March 8, 2011 and March 11, 2011, the Division respectively filed a Notice and
17 an amended Notice against Shorey and Westcap Energy, Inc. (“WEI”), an Arizona corporation doing
18 business as Westcap Solar.

19 25. On March 21, 2013, the Commission issued Decision No. 73775, against Shorey and
20 WEI. The Decision ordered Shorey and WEI to cease and desist from their actions in violation of
21 A.R.S. §§ 44-1841, 44-1842, and 44-1991. The Decision further ordered Shorey, the marital
22 community of Shorey and M.J. Shorey, and WEI, jointly and severally, to make an offer of rescission
23 [in the total amount of \$388,495] and pay an administrative penalty in the amount of \$10,000.

24 26. Based on the Findings of Fact contained in Decision No. 73775, WEI was an Arizona
25 corporation, with its principal place of business in Tucson, Arizona. Shorey was the chief executive
26 officer and a director of WEI. According to WEI’s promotional materials, it was a “licensed sales

1 and installation company with experienced installers, engineers, and electricians” that installed solar
2 hot water systems for residential, commercial, and industrial customers.

3 27. In 2009, Shorey entered into an agreement with a company, Litchfield, to raise funds
4 for WEI. In return, Litchfield would receive commissions equivalent to 7.5 percent of the total funds
5 invested in WEI. Shortly thereafter, Litchfield informed Shorey that a foreign-based company named
6 Intuition Capital was able to locate investors in Europe for small private companies that were
7 attempting to find investors. However, Intuition Capital required commissions equivalent to 65
8 percent of the total funds invested in WEI. In total, Shorey and/or WEI agreed to pay 72.5 percent in
9 commissions to Litchfield and Intuition Capital, which would be paid from the investors’ investment
10 funds.

11 28. From January of 2010, through March of 2010, Shorey and WEI offered and sold
12 securities in the form of preferred stock issued by WEI to 24 foreign investors. The investors invested
13 a total of \$388,495 in exchange WEI promised 8 percent returns on investments for a term of one
14 year, after which each share of preferred stock could be converted to ten shares of common stock
15 when the company became publicly traded. From the \$388,495 WEI and Shorey raised from the
16 investors they paid a total amount of \$281,714 (72.5 percent) in commissions to Litchfield and
17 Intuition Capital.

18 29. It was found that both Litchfield and Intuition Capital were non-registered
19 broker/dealers and the 72.5 percent in commissions paid to them by WEI were “outside the normal
20 range of amounts, and such deviation from the information disclosed in the PPM was a material
21 fact.” Shorey and WEI failed to disclose to investors the “excessive” and “unreasonable” amounts
22 of commissions paid to Litchfield and Intuition Capital.

23 30. The Commission found that Shorey and WEI “committed fraud in the offer of an
24 unregistered security, engaging in transactions, practices, or a course of business which involved
25 untrue statements and omissions of material facts in violation of A.R.S. § 44-1991.”
26

31. WEI's securities offerings and its "excessive" payments of 72.5 percent commissions to Litchfield and Intuition Capital were very similar to ABCO Energy's securities offerings and its payments of 65 percent commissions to Intuition Capital.

C. Current action

32. Since its inception, ABCO Energy has been an "installation contractor for alternative energy products that are used in the replacement of fossil fuel generation ... ABCO sells and installs Photovoltaic and Solar Thermal products that are purchased from both USA and offshore manufactures." Respondents sought financing in order for the "the Company [ABCO Energy] to grow quicker by providing the Company the necessary capital to employ a sales and marketing team and to establish the Company as an immediate and long term leader in the industry."

33. Respondents were determined to raise capital through foreign investors and engaged Intuition Capital to locate prospective foreign investors in exchange for commissions.

D. Intuition Capital agreement

34. In 2011, ABCO Energy executed a Contract for Services (the, "Contract") with Intuition Capital [the same above-mentioned company that Shorey and WEI paid 65 percent in commissions to locate foreign investors for WEI's securities offerings, *see* Decision No. 73775]. According to the Contract, ABCO Energy "[w]ishes to engage the services of Intuition to advise and consult with the Company on certain business and corporate matters and [*sic*] in relation to the placement of the Company's Regulation S offering to non-USA citizens ...consisting of 4,000,000 restricted common shares priced at \$.40 USD."

35. In exchange for Intuition Capital's services, ABCO Energy agreed to pay to Intuition Capital "as reimbursement of expenses for rent, telephone, admin salaries, sales salaries, **commissions**, printing, postage, and all other expenses ... under this agreement on a **non-accountable basis** (emphasis added)." The non-accountable expenses are "estimated to be 65% of the funds successfully raised through Intuition referrals, will be paid to Intuition within three days of receipt of cleared funds by ABCO Energy, Inc."

36. At all times relevant, Intuition Capital was based in the United Kingdom and/or Spain, and was neither registered as broker or dealer with FINRA, nor registered to conducted regulated activity in the United Kingdom or Spain

E. ABCO Energy's securities offering

37. Between 2011, through 2019, Intuition Capital located at least eighty-one prospective foreign investors [primarily based in the United Kingdom] who were interested in investing in ABCO Energy's securities offerings. Each time a prospective investor was located, Intuition Capital provided Shorey with the prospective investor's contact information, including their name, address, phone number, email address, and proposed amount of investment.

38. Once, Shorey received a prospective investor's contact information Shorey sent the prospective investor, the following documents: an initial welcome letter ("Welcome Letter"); ABCO Energy's Corporate Profile; ABCO Energy's Subscription Agreement; and ABCO Energy's PPM. According to some of ABCO Energy's PPM's, "[a]ll funds raised in the offering will be utilized by the needs" of ABCO Energy's consolidated "family of companies," including ABCO Solar to "grow and prosper to profitability."

39. During the relevant time-period, from 2011 through 2019, Respondents offered and sold ABCO Energy's securities offerings in the form of common stock and/or convertible preferred stock ("Preferred Stock") within or from Arizona to at least eighty-one foreign investors ("Investors"). The Preferred Stock "was priced at \$5.00 and had a dividend requirement of 8% [interest] per annum, which ceased upon the conversion or when held for 12 months." The Investors collectively invested \$7,699,546.19 in ABCO Energy's securities offerings.

40. At all times relevant, ABCO Energy has conducted business as ABCO Energy and/or as ABCO Solar. ABCO Solar is a wholly owned subsidiary of ABCO Energy.

41. On September of 2011, Shorey sent a Welcome Letter to at least one Investor that was written on ABCO Solar's letterhead. The Welcome Letter stated the following: (1) "Thank you so much for your interest in our company" and "interest in an investment;" (2) We are "preparing

1 the company for a full listing on the NASD [National Association of Securities Dealers] Bulletin
2 Board,” and your “investment will be put to good use;” and (3) We have attached a Subscription
3 Agreement for your review ... complete the Subscription Agreement in full, as this will be used by
4 the transfer agent to issue your stock certificates.”

5 42. On October of 2011, Shorey sent a follow-up letter to the above-mentioned Investor
6 that was written on ABCO Solar’s letterhead. The follow-up letter stated the following: (1) “Thank
7 you so much for your support and investment;” (2) The “funds you sent for your investment ... have
8 arrived and cleared in our account;” (3) “Your restricted shares should be issued in the next sixty
9 days;” (4) “We need the signed signature page of your agreement [Subscription Agreement];” and
10 (5) If you have any questions about the company or your investment, please do not hesitate to write
11 or call.”

12 43. ABCO Energy’s Subscription Agreements that Shorey sent to Investors contained
13 and/or stated the following information: (1) The price per share of ABCO Energy’s stock, which
14 fluctuated throughout the entire offering; (2) Wire transfer instructions for Investors to wire their
15 funds to ABCO Solar’s business account held in Arizona or ABCO Energy’s [dba ABCO Solar]
16 business account held in Arizona; and (3) At least one of the Subscription Agreements stated, “[t]his
17 Subscription Agreement and the undersigned’s investment shall be governed by and construed in
18 accordance with the laws of the State of Arizona;”

19 44. During the relevant time-period, the majority of the Investors’ funds were wire
20 transferred into ABCO Solar’s business accounts held in Arizona, and the remainder of the Investors’
21 funds were wire transferred into ABCO Energy’s business accounts held in Arizona. According to
22 O’Dowd, once an Investor’s funds are wired directly to ABCO Energy’s business account or ABCO
23 Solar’s business account, then ABCO Energy or ABCO Solar wired Intuition Capital their
24 commissions within a week, which was paid upfront from the Investor’s funds.

25 45. According to ABCO Energy’s PPM’s, the company reserved the right “to pay
26 commissions to registered brokers or dealers registered with the National Association of Securities

1 Dealers (which is now FINRA) and other international registration jurisdictions” in connection with
2 the sale of shares. Further, the company may also “pay finder’s fees for introductions to persons or
3 entities” that purchase the shares in this offering, and the “fees would be within the range of amounts
4 normally paid in similar situations.”

5 46. Contrary to the above-statement, at all times relevant, Intuition Capital: (1) Was not
6 a registered broker or dealer with FINRA; (2) Was not registered to sell securities in Arizona; and
7 (3) Was not registered to conduct regulated activity in the United Kingdom or Spain. Further, ABCO
8 Energy’s contracted payments of 65 percent in commissions to Intuition Capital were “excessive”
9 and not within the “normal range” of amounts paid in similar situation.

10 **F. ABCO Energy’s and ABCO Solar’s management team**

11 47. ABCO Energy’s PPM, dated August of 2011, under the Management Team section
12 stated that the “Management team is comprised of proven professionals, with expertise and success
13 in complimentary fields.” The “team has successfully started new companies, taken companies
14 public, sold private companies to public companies...” In the PPM, O’Dowd was listed as ABCO
15 Energy’s president and director and Shorey was listed as ABCO Energy’s CFO and director.

16 48. In May of 2012, Shorey allegedly sustained “an injury” that caused him to voluntarily
17 retire or resigned his CFO, secretary, and director positions with ABCO Energy.

18 49. However, from 2012 through the present, Shorey has acted in the capacity as the CEO
19 and CFO of ABCO Energy and ABCO Solar. Shorey is listed as an officer of ABCO Solar with the
20 Arizona Registrar of Contractors. Shorey’s name and roles in ABCO Energy and ABCO Solar were
21 intentionally removed from all subsequent offering documents and public filings. Shorey’s removal
22 was in name only and was done for “appearances only” because of the Division’s Notices that were
23 filed against Shorey and his companies in 2010 and 2011, and later because of the Commission’s
24 Decisions issued against Shorey and his companies WEI and CWC.

25 50. Since at least February of 2013, Shorey and his company CWC have been subject to
26 cease desist orders from violating the Securities Act. Since at least March of 2013, Shorey and his

1 other company WEI [later known as ABCO Solar] have been subject to cease desist orders from
2 violating the Securities Act.

3 51. In March of 2013, January of 2017, January of 2018, and January of 2019,
4 Respondents respectively issued updated ABCO Energy PPM's. None of those PPM's listed or
5 mentioned Shorey's name and intentionally did not disclose the Commission's actions against
6 Shorey.

7 **G. O'Dowd's admissions**

8 52. On June 4, 2019, and on October 3, 2019, O'Dowd testified under oath and made the
9 following admissions:

- 10 • Shorey was removed as ABCO Energy's and ABCO Solar's CEO and CFO in name
11 only, Shorey still actively controlled ABCO Energy;
- 12 • Shorey's role and control of ABCO Energy was not disclosed to Investors in the
13 offering documents and was not disclosed public filings with the SEC;
- 14 • The non-disclosures in ABCO Energy's offering documents of Shorey role as CFO
15 of ABCO Energy was a calculated decision and done intentionally;
- 16 • Shorey's name was not listed in ABCO Energy's offering documents "because of
17 appearances ... if someone queried David's [Shorey] name they would see some
18 record" of the Commission's Decisions;
- 19 • Shorey stated to O'Dowd that ABCO Energy's negotiated payments of 65 percent in
20 commissions to Intuition Capital was "excessive;"
- 21 • "Intuition Capital acted under the S-1 [SEC Form S-1], which we had filed, to
22 promote ABCO Solar or ABCO Energy into foreign markets;" and
- 23 • The 65 percent commissions ABCO Energy paid to Intuition Capital from the
24 Investors' funds would have been something important for the Investors to know.

25 ...

26 ...

H. ABCO Energy's Going Concerns (2014 through 2019)

53. Since 2011, ABCO Energy has been required on regular basis to submit quarterly financial statements (10-Q) and annual audited financial statements (10-K) to the SEC. ABCO Energy's audited 10-K filings for the years 2014 through 2019, indicated a "going concern" with the company's financial health. "The Company has incurred accumulated deficits, recurring operating losses since inception and negative cash flows from operations."

54. ABCO Energy's audited 10-K financial statements from 2014 through 2019, all contain the following same or similar language in its Note 3:

The Company will continue as a going concern, which contemplates the recoverability of assets and the satisfaction of liabilities in the normal course of business. Since its inception, the Company has been engaged substantially in financing activities and developing its business plan and marketing. The Company incurred a loss of \$1,381,077, the net cash flow used in operation was \$664,840 and its accumulated net losses from inception through the period ended December 31, 2019 is \$6,561,508, which raises substantial doubt about the Company's ability to continue as a going concern. In addition, the Company development activities since inception have been sustained through capital contributions from shareholders.

55. In stark contrast to the "going concern" indicated in ABCO Energy's audited 10-K financial statements from 2014 through 2109, ABCO Energy's offering documents and correspondences with Investors represented ABCO Energy's financial health as upbeat. For example, ABCO Energy's January of 2018, PPM represented that "ABCO has been increasing its sales turnover for the past two years and has booked more than \$1,450,000 USD in sales for 2017. This is an increase of more than 200% over 2016 and is the result of new residential sales programs ... we enter into our 2018 year with a backlog of more than \$400,000 in unfinished work that will lead to higher sales and better started year."

56. In addition, on May 15, 2014, O'Dowd sent a letter to an Investor regarding his interest in the investing in ABCO Energy's securities offerings. O'Dowd wrote, "we are pleased to announce that we have been growing at a remarkable rate since our inception and have doubled our

1 sales every year.” O’Dowd representations to the Investor are contradicted by ABCO Energy’s
2 audited 10-K financial statements.

3 57. During the relevant time-period, from 2014 through 2019, Respondents have failed
4 to disclose to the Investors the “going concern” of the company’s dire financial health.

5 58. From 2011 through 2019, the Investors collectively invested \$7,699,546.19 and have
6 only received back \$32,987.52. The remaining principal amount owed is \$7,666,558.67.

7 **IV.**

8 **VIOLATION OF A.R.S. § 44-1841**

9 **(Offer or Sale of Unregistered Securities)**

10 59. From on or about 2011 through 2019, Respondents offered or sold securities in the form
11 of stock within or from Arizona.

12 60. The securities referred to above were not registered pursuant to Articles 6 or 7 of the
13 Securities Act.

14 61. This conduct violates A.R.S. § 44-1841.

15 **V.**

16 **VIOLATION OF A.R.S. § 44-1842**

17 **(Transactions by Unregistered Dealers or Salesmen)**

18 62. Respondents offered or sold securities within or from Arizona while not registered as
19 dealers or salesmen pursuant to Article 9 of the Securities Act.

20 63. This conduct violates A.R.S. § 44-1842.

21 **VI.**

22 **VIOLATION OF A.R.S. § 44-1991**

23 **(Fraud in Connection with the Offer or Sale of Securities)**

24 64. In connection with the offer or sale of securities within or from Arizona, Respondents
25 directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements
26 of material fact or omitted to state material facts that were necessary in order to make the statements

1 made not misleading in light of the circumstances under which they were made; and (iii) engaged in
2 transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon
3 offerees and investors. Respondents' conduct includes, but is not limited to, the following:

4 a) Respondents failed to disclose to the Investors the Commission's Actions under
5 Decision Nos. 73775, and 73656 against Shorey;

6 b) Respondents failed to disclose to the Investors that approximately 65 percent of
7 all their investments in ABCO Energy were contractually committed to the payments of commissions,
8 leaving only approximately 35 percent available to ABCO Energy to obtain a return for the Investors;

9 c) Respondents failed to disclose to the Investors that from 2012 through at least
10 2019, Shorey acted in the capacity of ABCO Energy's and ABCO Solar's CEO and CFO;

11 d) Respondents failed to disclose to the Investors that for the years 2014 through
12 2019, ABCO Energy's annual audited 10-K financial statements indicated a "going concern" of the
13 company's financial stability and health;

14 e) Respondents misrepresented to the Investors that Shorey retired or resigned in
15 2012 because of an injury, when in fact, Shorey and O'Dowd removed Shorey's name and any
16 indication that Shorey still directly or indirectly controlled ABCO Energy and ABCO Solar from all of
17 ABCO Energy's offering documents and public filings; and

18 f) Respondents misrepresented that they would find investors through a registered
19 broker-deal. When in fact, Intuition Capital was neither a registered broker-dealer with FINRA, nor
20 authorized to conduct regulated activity in the United Kingdom or Spain.

21 65. This conduct violates A.R.S. § 44-1991.

22 ...

23 ...

24 ...

25 ...

26 ...

VII.

CONTROL PERSON LIABILITY PURSUANT TO A.R.S. § 44-1999

66. From at least 2011, through at least 2019, Shorey directly or indirectly controlled ABCO Energy within the meaning of A.R.S. § 44-1999. Therefore, Shorey is jointly and severally liable to the same extent as ABCO Energy for its violations of A.R.S. § 44-1991.

67. From at least 2011, through at least 2019, both Shorey directly or indirectly controlled ABCO Solar within the meaning of A.R.S. § 44-1999. Therefore, Shorey is jointly and severally liable to the same extent as ABCO Energy for its violations of A.R.S. § 44-1991.

VIII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

1. Order Respondents and any of the Respondents' agents, employees, successors and assigns to permanently cease and desist from violating the Securities Act, pursuant to A.R.S. § 44-2032.
2. Order Respondents to take affirmative action to correct the conditions resulting from Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;
3. Order Respondents to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036.
4. Order that Respondents and Respondents' Spouses be subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action; and
5. Order any other relief that the Commission deems appropriate.

IX.

HEARING OPPORTUNITY

Each Respondent including Respondent Spouses may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. **If a Respondent or a Respondent Spouse requests a hearing, the requesting Respondent must also answer this Notice.** A request for hearing must be in writing and

received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The requesting respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/divisions/hearing>.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Carolyn D. Buck, ADA Coordinator, voice phone number (602) 542-3931, e-mail cdbuck@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation. Additional information about the administrative action procedure may be found at <http://www.azcc.gov/divisions/securities/enforcement/AdministrativeProcedure.asp>

X.

ANSWER REQUIREMENT

Pursuant to A.A.C. R14-4-305, if a Respondent or a Respondent Spouse requests a hearing, the requesting Respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/hearings>.

Additionally, the answering Respondent must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a

1 copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007,
2 addressed to Michael Shaw.

3 The Answer shall contain an admission or denial of each allegation in this Notice and the
4 original signature of the answering respondent or respondent's attorney. A statement of a lack of
5 sufficient knowledge or information shall be considered a denial of an allegation. An allegation not
6 denied shall be considered admitted.

7 When the answering Respondent intends in good faith to deny only a part or a qualification
8 of an allegation, the Respondent shall specify that part or qualification of the allegation and shall
9 admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

10 The officer presiding over the hearing may grant relief from the requirement to file an Answer
11 for good cause shown.

12 Dated this 13th day of May, 2021.

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14 /s/

15 Wendy Coy
16 Assistant Director of Securities
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